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In The

Supreme Court of the United States

October Term 1996

LINDA J. BLESSING, Director, Arizona Department of Economic Security, in her official capacity,
Petitioner,

v.

CATHY FREESTONE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* NATIONAL CENTER FOR YOUTH LAW, ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT, CATHOLIC CHARITIES USA, CENTER FOR LAW AND SOCIAL POLICY, CHILDREN NOW, CHILDREN'S DEFENSE FUND, NATIONAL ASSOCIATION OF CHILD ADVOCATES, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST[1]

The National Center for Youth Law ("NCYL") is a San Francisco-based private non-profit organization providing legal assistance on issues affecting poor children. NCYL's top priorities include assuring adequate economic support for children and their families. Child support is a vital source of income for many children living in or near poverty, helping custodial families meet their children's needs and attain economic self-sufficiency.

The Association for Children for Enforcement of Support ("ACES") is a nationwide, grassroots organization of parents and children seeking to improve children's lives through timely and adequate child support collection. ACES has 350 chapters in 47 states with 35,000 members across the nation.

Catholic Charities USA ("Catholic Charities"), the oldest and largest network of private social services agencies, serves over 11 million people, the vast majority of whom are single mothers and their children. Local Catholic Charities agencies work to improve the lives of these children in a variety of ways, including supporting efforts to improve child support enforcement, a key to assuring children adequate financial support.

The Center for Law and Social Policy ("CLASP") is a national public interest law firm which specializes in issues affecting low-income families. As part of this work, through its research, writing, training, and litigation, CLASP has long advocated improved paternity establishment and child support enforcement as a means of both promoting paternal

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[1]Counsel for both Petitioner and Respondents have consented to the filing of this brief pursuant to Rule 37. Letters indicating consent have been filed with the Clerk of the Court.

responsibility and improving the economic and emotional lives of children. From its experience in this area, CLASP believes that, if custodial parents and their children are precluded from suing state officials who provide inadequate child support services, state performance will be worse than it now is and children will suffer.

Children Now is a nonpartisan policy and advocacy organization for children. One of its top priorities is to promote children's healthy growth and development. Adequate financial support is necessary to meet children's nutritional, housing, health, and other basic needs. For millions of children nationwide, child support determines both their present quality of life as well as their future prospects.

The Children's Defense Fund ("CDF") exists to provide a strong and effective voice for all the children of America, who cannot vote, lobby, or speak for themselves. CDF pays particular attention to the needs of poor and minority children and those with disabilities. CDF works to assure that all families have adequate income to meet their children's needs, and effective child support enforcement is essential to attain that goal.

The National Association of Child Advocates ("NACA") works to secure the safety, health, and education of all America's children by building and strengthening state- and community-based child advocacy organizations. NACA's independent member organizations advocate for children in more than 40 states and communities, voicing the needs of the most vulnerable citizens to policy-makers, the media, and the general public. NACA and its members believe that the alleviation of child poverty and the improvement of child well-being should be this nation's foremost priorities. Effective child support enforcement is critical to meeting those goals.

The National Association of Counsel for Children ("NACC") is a nonprofit association of attorneys, judges, and

other professionals involved with children and the legal system. NACC was founded in 1977 and maintains membership is all 50 states, the District of Columbia and numerous foreign countries. The mission of the NACC is to enhance the welfare of children by promoting excellence in the field of children's law.

SUMMARY OF ARGUMENT

Amici National Center for Youth Law, Association for Children for Enforcement of Support, Catholic Charities USA, Center for Law and Social Policy, Children Now, Children's Defense Fund, National Association of Child Advocates, and National Association of Counsel for Children seek to have this Court affirm the Ninth Circuit Court of Appeals and, in particular, ask this Court to hold that Congress intended the child support enforcement service requirements of Title IV-D of the Social Security Act, 42 U.S.C. §§ 651 *et seq.*, to be enforceable by children and their families in a Section 1983 action. Child support payments are critical to the well-being of millions of the nation's children. Congress has repeatedly expressed concern, over the two decade history of Title IV-D, about the inadequacy of child support collection, and has repeatedly amended the statute to add ever more stringent requirements for state agencies, to improve their enforcement tools and increase federal funding, and to reiterate the importance to *children* of effective child support enforcement. It is clear that children are intended beneficiaries of Title IV-D, and that Congress intended its strict and detailed requirements for child support services to be mandatory and enforceable against the state officials.

Moreover, Congress structured Title IV-D so as to give state agencies exclusive powers to locate noncustodial parents

and to collect support otherwise unavailable to parents, and to require many custodial families to assign their support rights to the state. It would make no sense for Congress to create a statutory scheme that compels families to rely on the state IV-D agencies for enforcement services, but not intend to make those agencies accountable to the families they serve.

Petitioner's arguments that an enforceable right to child support services would impose excessive costs on the states and generate a flood of litigation are baseless. States actually *make money* from the IV-D system. In the federal circuits that have recognized families' rights to enforce the requirements of IV-D, there has been no flood of litigation, not even a trickle.

ARGUMENT

I. CHILD SUPPORT IS CRITICAL TO THE WELL-BEING OF MILLIONS OF CHILDREN

Single parents with children (custodial parents) have sued Petitioner for failure to provide timely child support services, as mandated by federal law. The prompt and steady availability of child support services is critical to attaining a minimal level of economic security for millions of children in the United States.

The percentage of American children growing up in single-parent families has increased dramatically in the last three decades. It has been projected, based on current trends, that the *typical child* born in the 1980s will spend a significant portion of his or her childhood living in a single-parent household.[2]

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[2]House Comm. on Ways and Means, Overview of Entitlement Programs, H.R. Doc. No. 9, 102d Cong., 2d Sess. 958

Most children growing up in single-parent households are significantly poorer than children in two-parent households.[3] However, child support payments can make a dramatic difference in children's lives. For example, in 1991 single-parent households in which the children did not have a support order had a mean annual income of $13,283; those in which the children had a support order and received at least some support had a mean income of $17,411; and those in which the children had a support order and received all the support due had a mean income of $20,050.[4]

This difference in income has very real consequences for children's health and safety. A recent survey of custodial mothers who had problems collecting child support payments shows that these families had trouble affording adequate shelter, food, health care, and child care, even when the mother worked full-time or more. In the first year after the parents separated, almost half the families surveyed faced a housing crisis which forced them to move in with friends or other family members; and ten percent actually became homeless at some

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(1991).

[3]"In 1992, nearly 46 percent of the 8.2 million families maintained solely by the mother with children under 18, had incomes below the poverty threshold." House Comm. on Ways and Means, Overview of Entitlement Programs, H.R. Doc. No. 27, 103d Cong., 2d Sess. 458 (1994). By contrast, only nine percent of two-parent families with children are poor. *Id.* at 1146-47, tbl. G-33.

[4]U.S. Bureau of the Census, *Child Support for Custodial Mothers and Fathers: 1991,* Current Population Rep., Series P-60, No. 187, tbl. B (1995).

point.[5] Such moves can severely disrupt children's lives, causing them to change schools and lose contact with relatives and friends. Thirty-two percent of the mothers in the survey reported that their children went hungry at some point during the year; 55 percent reported that their children no longer received regular health check-ups; 36 percent reported that their children had not received medical care when they became ill; and 26 percent reported that they had to leave their children unsupervised while they were at work.[6] In each case, the reason cited was lack of money.

The National Commission on Children, established by Pub. L. 100-203 (1987) "to serve as a forum on behalf of the children of the nation," has described some of the effects of poverty on children:

> Many poor children go undernourished, are inadequately clothed, and live in substandard housing. For them, the world is often a dangerous and threatening place to grow up. It is crime-ridden streets where schools and playgrounds are the domain of gangs and drug dealers, or it is desolate rural areas without adequate roads and running water. It is dilapidated homes with broken windows, poor heating, lead paint, rats and garbage. It is a world in which children grow up afraid and ashamed of the way they live.
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> National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families* 29 (U.S. Gov't Printing Office 1991).[7]

Child support not only helps shield children from the harsh effects of poverty, but also can be a critical factor in maintaining the relationship between noncustodial parents -- usually fathers -- and their children. Fathers who pay support are much more likely to see their children on a regular basis, providing moral, intellectual, and emotional support to them, as well as financial assistance.[8] Receipt of support can increase educational opportunities, enhance a child's behavioral and cognitive development, and improve the quality of parent-parent and parent-child relationships by reducing conflict

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[5]Paula Roberts, *Childhood's End: What Happens to Children When Child Support Obligations Are Not Enforced* 7 (National Child Support Assurance Consortium 1993). Representative groups of parents in New York, Georgia, Ohio and Oregon were sampled.

[6]*Id.* at 6.

[7]*See also* Marian Wright Edelman, *Introduction* to Arloc Sherman, *Wasting America's Future: The Children's Defense Fund Report on the Costs of Child Poverty* xvii (Beacon Press 1994), cataloguing studies of the effects of poverty on children ("Child poverty stalks its survivors down every avenue of their lives. It places them at greater risk of hunger, homelessness, sickness, physical or mental disability, violence, educational failure, teen parenthood, and family stress . . .").

[8]Wallerstein and Huntington, *Bread and Roses: Nonfinancial Issues Relating to Fathers' Economic Support of Children Following Divorce*, in The Parental Child-Support Obligations 135, 149 (J. Cassetty ed. 1983) ("child support is unquestionably one of the major strands in the relationship between fathers and children during the years following divorce"); Furstenberg, *et al., The Life Course of Children of Divorce: Marital Disruption and Paternal Contact*, 48 Am. Soc. Rev. 656, 665 (1983) ("fathers who pay some support are much more likely to see their children on a regular basis").

between parents.[9] On the other hand, children's loss of ties with their fathers can lead to emotional disorders, delinquency and crime, adolescent pregnancy, and other social ills.[10]

Our nation has an enormous stake in having an effective child support system that helps to ensure the economic stability of single-parent families, and facilitates responsible fatherhood and maintenance of close ties between noncustodial parents and their children. This Court has long recognized that child support is "an essential right" for children, *Gomez v. Perez,* 409 U.S. 535, 538 (1973); *see also Mills v. Habluetzel,* 456 U.S. 91, 97, 101-02 (1982), and that "[o]ur Anglo-American tradition accords a special sanctity to the support obligation," *Rose v. Rose,* 481 U.S. 619, 637 (1987) (O'Connor, J., concurring).

II. CHILDREN ARE INTENDED BENEFICIARIES OF TITLE IV-D SERVICES

Amici in support of Petitioner assert that children are not the "especial beneficiaries" of Title IV-D[11] and therefore do not satisfy the Section 1983 test laid out in *Wright v. Roanoke Redevelopment and Hous. Auth.*, 479 U.S. 418 (1987) and *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990). This argument is refuted by the plain language of the statute, its legislative history, and the policy statements of the federal Office of Child Support Enforcement (hereafter "OCSE").[12]

To achieve its goal of assisting children in single-parent households, Congress has created a highly detailed statutory and regulatory scheme requiring specific services to be provided within set time limits for each and every case. State IV-D agencies must "perform in a cost-effective and efficient manner to *secure support for all children who have sought assistance in securing support.*"[13] The statutes and regulations setting out the required activities and the time limits are detailed in Respondents' Brief on the Merits.

Beginning with the passage of Title IV-D of the Social Security Act in 1975,[14] and continuing through the recent

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[9]Valerie King, *Nonresident Father Involvement and Child Well-Being: Can Dads Make a Difference?*, 15 J. of Fam. Issues 78, 91 (1994).

[10] David Blankenhorn, *Fatherless America* 1 (Basic Books 1995).

[11]Illinois, *et al.* Amicus Brief (hereafter "Illinois Br.") at 6-12; American Public Welfare Association, *et al.* Amicus Brief (hereafter "APWA Br.") at 27 n. 70; National District Attorneys Association, *et al.* Amicus Brief (hereafter "NDAA Br.") at 25-26. It is worth noting that Petitioner ostensibly concedes that children are among the beneficiaries of Title IV-D. Petitioner Brief on the Merits (hereafter "Pet. Br.") at 13.

[12]OCSE is a separate unit within the U.S. Department of Health & Human Services charged with oversight of the state IV-D programs and mandated by federal law. 42 U.S.C. § 652(a) (West Supp. 1996), *amended by* the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105, 2216, 2223, 2230, 2233-34, 2238-39, and 2259. Note, actual statutory and section references to amendments in the Act will be cited only when pertinent. In all other cases, only page numbers to the Public Law will be cited.

[13]42 U.S.C. § 658(a) (West 1991) *amended by* the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. at 2231 (emphasis added).

[14]Social Services Amendments of 1974, Pub. L. 93-647, 88 Stat. 2337 (1975).

enactment of the Personal Responsibility Act in August 1996,[15] Congress has consistently stated its desire to benefit children through the IV-D system. The Senate Report on the original legislation emphasized the interests of children, including "the right to receive support from their fathers"; "the right to have their fathers identified so that support can be obtained"; and the "right to support, inheritance, and to know who [their] father is."[16] As Senator Nunn eloquently testified: "[T]he biggest beneficiaries of this bill are some of the country's most neglected children who have been wantonly deprived of their rightful support by deserting fathers."[17]

Senator Nunn described Title IV-D as "a bill of rights for children -- the right of every child to have some identity, the right of every child to have paternity established in a fair and efficient manner, and the right of every child to support from his natural parents."[18] Title IV-D was enacted as "necessary legislation aimed at providing relief for the millions of women and children who are victimized by the nonpayment of child

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[15]Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (to be codified in scattered sections of 42 U.S.C.) (hereafter "PRA").

[16]S. Rep. No. 1356, 93d Cong., 2d Sess., at 42, 51-52 (1974).

[17]121 Cong. Rec. 26541 (1975) (statement of Senator Nunn). Senator Nunn's testimony occurred several months after enactment of Title IV-D and concerned S. 2081 (1975), a child support bill similar to the Social Services Amendments of 1974, but not enacted.

[18]*Id.*

support."[19]

Ten years later, in amending Title IV-D through the Child Support Enforcement Act of 1984, Congress made clear that "there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program; [and] Congress is strengthening that program to *recognize the needs of all children.*" Pub. L. 98-378, Sense of Congress § 23(2), (3) (1984) (emphasis added). The legislation was designed to carry out "the larger societal responsibility for making sure that all children receive financial support from both their parents to the fullest extent possible." H. R. Rep. No. 527, 98th Cong., 1st Sess., at 29-30 (1983).

Senator Dole, then Chairman of the Senate Finance Committee, emphasized that the chief objective of the IV-D program is not welfare cost savings, but to benefit children: "It is important to remember that the Federal-State child support enforcement program is designed not to produce revenue for the States and local jurisdiction -- or for the Federal Government. The goal of this program is to collect child support for children . . . . This bill . . . will help to strengthen that partnership *for the good of all children.*" 130 Cong. Rec. 9843 (1984) (emphasis added).

Just this year, Congress reiterated its objectives for the child support program: "The proposal is designed to ensure that children receive the support they are due on time and in full by achieving three major goals: establishing uniform State tracking procedures; taking strong measures to establish paternity . . . and ensuring tough child support enforcement." H. R. Rep. No. 651, 104th Cong., 2d Sess., at 1324 (1996). "*The fundamental goal of these [state IV-D] programs, of course, is to increase the financial security of children who live*

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[19]129 Cong. Rec. 33037 (1983) (statement of Rep. Biaggi).

with one parent. This goal enjoys nearly universal support among members of Congress and among the American public." *Id.* at 1440 (emphasis added).

OCSE also recognizes that its role and the role of the IV-D program are to serve children. Its mission statement is: "To assure that assistance in obtaining support (both financial and medical) is available to children through locating parents, establishing paternity and support obligations, and enforcing those obligations." OCSE, *Child Support Enforcement: Strategic Plan for FY 1995-1999* 2 (Feb. 28, 1995). Likewise, its vision statement is to "*put children first* by helping parents assume responsibility for the economic and social well-being, health and stability of their children." *Id.* (emphasis added).

III. THE EXCLUSIVE ENFORCEMENT POWERS GIVEN TO STATE AGENCIES AND THE MANDATED ASSIGNMENT OF SUPPORT RIGHTS ARE PROOF OF CONGRESS' INTENT TO CREATE AN ENFORCEABLE RIGHT TO SUPPORT ENFORCEMENT SERVICES

Congress chose to provide state IV-D agencies with exclusive access to certain key tools for enforcement against noncustodial parents. These tools are not available to parents and private attorneys seeking to collect child support. It would make little sense for Congress to give such exclusive powers to state agencies -- in effect compelling families to rely on these agencies -- but not intend the service requirements of IV-D to be enforceable.

For example, Congress has required state agencies to search for noncustodial parents and/or their assets through the Federal Parent Locator Service (which contains confidential location information from federal agencies that is inaccessible

to families outside the IV-D system) and through other sources, such as telephone companies; the U.S. Postal Service; financial references; unions; police, parole, and probation records, if appropriate; and state agencies and departments as authorized by state law, including those which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, drivers' licenses, vehicle registration, and criminal records. 42 U.S.C. § 653 (West 1991), *amended by* PRA, 110 Stat. at 2214-18, 2220, 2237-38, 2250-51, and 2259; 42 U.S.C. § 654(8) (West Supp. 1996), *amended by* PRA, 110 Stat. at 2218 and 2259; 45 C.F.R. § 303.3(b)(1). This arsenal of search methods is unavailable outside the IV-D program, and most of the information cannot be used by private investigators because of its confidentiality.

Likewise, some of the most effective collection methods, such as federal and state tax refund intercepts, withholding of unemployment or disability benefits, and license revocation, are only available through state IV-D agency action. Additionally, when all state agency efforts have failed, the agency can request "full collection services" from the U.S. Treasury. 42 U.S.C. § 652(b) (West Supp. 1996) *amended by* PRA, 110 Stat. at 2200; 45 C.F.R. § 303.71.

Moreover, in order to receive services from the IV-D agency, many custodial families must surrender legally cognizable interests. If the children receive benefits under Title IV-A (formerly Aid to Families with Dependent Children) of the Social Security Act, the custodial family must assign its right to receive child support,[20] including the right to accrued

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[20]42 U.S.C. § 602(a)(26) (West Supp. 1996). The Personal Responsibility Act continues this assignment. PRA § 103 *amending* Social Security Act § 408(a)(3), 42 U.S.C. § 608(a)(3), 110 Stat. at 2135.

and unpaid support, to the state.[21]

Thus, all custodial parents essentially are compelled by the Title IV-D system to give up control of their child support cases to the state. Families receiving Title IV-A benefits must assign their child support rights, and are thus precluded from pursuing the noncustodial parent independently. Other families formally retain this right, but do not have access to the arsenal of search and collection methods with which Congress has armed the state IV-D agencies.

IV. THE HISTORY OF CONGRESSIONAL RESPONSE TO THE PROBLEMS OF STATE CHILD SUPPORT SYSTEMS SHOWS CONGRESS' INTENT TO IMPOSE ENFORCEABLE MANDATES

The evolution of Title IV-D over the past two decades reveals recurring Congressional concern over the failures of state agencies to comply fully with their statutory duties, and repeated amendments to impose more detailed and clearer requirements on these agencies. This history indicates Congress' intent that its directives to state IV-D agencies be mandatory and enforceable. Over the course of Title IV-D's history, Congress has systematically demolished barriers to effective child support enforcement that existed in state IV-D programs in order to further protect children.

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[21]*See, e.g., Wisconsin v. Chamberland*, 361 N.W.2d 814, 818 (Minn. 1985) ("The assignment extinguished any right [the custodial parent] had to recover arrearages on her own behalf"); *County of Santa Clara v. Support, Inc.*, 89 Cal. App. 3d 687, 152 Cal. Rptr. 754 (1979) (custodial parent cannot independently collect accrued support assigned to the state).

As Senator Dole, then Chairman of the Senate Finance Committee, observed: "[A]lthough the Child Support Program has been operating with some success for a number of years, data indicate that child support is largely being ignored and the economic well-being of children is suffering . . . . Clearly, the State programs must be reformed -- to do a better job of collecting the support that is owed to children . . . ."[22] Congress has recently revisited the problems of the child support program and has provided yet more tools to the state IV-D agencies.[23]

Despite ever stricter mandates, enhanced enforcement tools, and substantial federal funding,[24] difficulties with child support collection remain. "In 1992 only 54 percent of single parent families with children had a child support order established and of that 54 percent, only about one-half received the full amount due."[25] Currently, 44 percent of families nationwide in the IV-D system lack any support orders.[26]

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[22]130 Cong. Rec. 9841-42 (1984).

[23]*See, e.g.*, PRA § 313 *adding* Social Security Act § 453a, 42 U.S.C. § 653a, 110 Stat. at 2209-12 (new hire registry must be developed by all states); PRA § 369 *amending* Social Security Act § 466(a), 42 U.S.C. § 666(a), 110 Stat. at 2251 (license suspension for delinquent noncustodial parents); PRA § 365 *amending* Social Security Act § 466(a), 42 U.S.C. § 666(a), 110 Stat. at 2250 (work requirement for delinquent noncustodial parents).

[24]For a discussion of federal funding of the IV-D program, see Section V, *infra*.

[25]PRA § 101(4), 110 Stat. at 2110.

[26]U.S. Department of Health and Human Services, *Child Support Enforcement: Nineteenth Annual Report to Congress* 33 (1995) (hereafter "*Nineteenth Annual Report*").

Furthermore, "[o]f the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection."[27] More than $35 *billion* in unpaid support remains uncollected.[28]

However, the task of collecting child support is not impossible, and Congress' requirement that all states provide specified enforcement services is not unreasonable. "In the 13 years from 1980 to 1993, the [IV-D] caseload has more than tripled, the number of paternities established has almost quadrupled, the number of orders established has increased almost three times, and the number of noncustodial parents located has grown sevenfold." Congressional Budget Office, *CBO Papers: The Changing Child Support Environment* 27 (Feb. 1995) ("hereafter "*CBO Report*").[29]

V. STATES GENERATE REVENUE THROUGH EFFECTIVE OPERATION OF IV-D PROGRAMS

Petitioner and Amici seek to bolster their argument that federal child support standards should not be enforceable against state agencies by claiming that the IV-D programs are not fully supported by federal funds and are expensive for states to operate.[30] To the contrary, most states actually make money

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[27]PRA § 101(4), 110 Stat. at 2110.

[28]*Nineteenth Annual Report* at 43.

[29] Hence, APWA's claim that the task is impossible, APWA Br. at 5, must be rejected.

[30]*See* Pet. Br. at 2 ("scarce public funding"); APWA Br. at 17 ("State legislatures must make funding decisions among hundreds of agencies and programs competing for the States'

from their IV-D programs. This is because the federal government pays the states not only a share of the costs,[31] but also an incentive payment based on each state's total support collections.[32] In addition, states can keep a share of the support collected on behalf of families receiving Title IV-A benefits.[33] "Over time, net costs of the [IV-D] program to the federal government have risen, as have net savings to states and localities."[34] In 1990, the states netted a combined total of $338 million. *Nineteenth Annual Report* at tbl. 21, p.78. By 1994 their combined net income had jumped 43 percent to $484 million. *Id.* By contrast, the federal government loss due to the IV-D program increased 85 percent from $528 million in 1990 to $976 million in 1994. *Id.* at tbl. 20, p. 77.

An effective state IV-D program can generate both needed support for children and significant revenue for the state. For example, in 1994 Washington State collected support

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limited financial resources"); Illinois Br. at 2 ("enormous financial and programmatic burdens on State IV-D programs"); NDAA Br. at 26 ("delicate balance of economic prioritization currently exists").

[31]The federal government pays 66 percent of the cost of most state IV-D expenditures, 90 percent of costs related to genetic testing, and 80-90 percent of most costs related to automation. PRA § 344 *amending* Social Security Act § 455, 42 U.S.C. § 655 (West Supp. 1996), 110 Stat. at 2236-37, 2256, and 2259.

[32]42 U.S.C. § 658 (West 1991), *amended by* PRA, 110 Stat. at 2231-32.

[33]PRA § 302 *amending* Social Security Act § 457(a)(1), 42 U.S.C. § 657(a)(1) (West 1991), 110 Stat. at 2200.

[34]*CBO Report* at 24

for over 35 percent of its cases. *Id.* at tbls. 32, 34, pp. 89, 91. That same year, Washington netted $30 million from its IV-D program. *Id.* at tbl. 21, p. 78. Thus, Petitioner's opposition to the requirements of IV-D as "unfunded mandates" is groundless. By contrast, however, Arizona, with a caseload size very similar to Washington's, collected support in less than six percent of its cases in 1994. *Id.* at tbls. 32, 34, pp. 89, 91. That same year, Arizona's IV-D program cost the State $5 million, two-thirds higher than its loss of $3 million in 1990.[35] All states have the ability to operate their IV-D programs with a surplus and should not be relieved of any obligation simply because they choose to run underperforming programs.

VI. RECOGNIZING CONGRESS' INTENT TO ALLOW CHILDREN AND FAMILIES TO ENFORCE IV-D PROGRAM REQUIREMENTS WILL NOT INCREASE LITIGATION

Petitioner's dire warnings that a floodgate of litigation would be opened by *Freestone*[36] is meritless as a legal argument and ignores practical constraints on federal litigation.

Not every custodial family that fails to receive child support can seek relief under Section 1983. Section 1983 is only available to those families to whom child support *services* have been denied in violation of explicit federal law. The idea that any large number of custodial parents in need of child

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[35]*Nineteenth Annual Report* at tbl. 21, p. 78. Note, Arizona is one of only eight of the 50 states (16 percent of states) that actually lost money on their IV-D programs. *Id.*

[36]Pet. Br. at 1-2. *See also* Illinois Br. at 2; APWA Br. at 17; NDAA Br. at 26-27.

support could find counsel and initiate Section 1983 actions is patently absurd. If these parents had the resources to litigate, they would be far more likely simply to file their own child support cases in state court. Additionally, Congress itself has made a determination that ensuring effective child support enforcement is more important than protecting the federal court from any incremental burdens. Congress has authorized the Secretary of the U.S. Department of Health & Human Services to permit litigation of ordinary individual actions for support enforcement in the District Courts, without regard to the amount in controversy, when another state fails to undertake the action within a reasonable time.[37]

These practical constraints on federal litigation explain why there has been no increase in Section 1983 litigation in the two federal circuits that have already explicitly recognized the enforceability of Title IV-D in Section 1983 actions.[38] Civil rights actions filed in the First and Eighth Circuits increased no more than those in the other Circuits.[39] Despite the dire

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[37]42 U.S.C. § 660 (West 1991). *See also* Child Support and Recovery Act of 1992, 18 U.S.C. § 228 (West Supp. 1996) (federal crime for nonpayment of support when the noncustodial parent lives in different state from the child.)

[38]*See Albiston v. Maine Comm'r of Human Serv.*, 7 F.3d 258 (1st Cir. 1993); *Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993), *cert. denied*, 114 S. Ct. 1373 (1994); *Jackson v. Rapps*, 947 F.2d 332 (8th Cir. 1991), *cert. denied*, 503 U.S. 960 (1992).

[39]Administrative Office of the United States Courts, *Federal Judicial Caseload Statistics* tbl. C-3 (1994 and 1995); Administrative Office of the United States Courts, *Federal Judicial Workload Statistics* tbl. C-3 (1993); Administrative Office of the United States Courts, *Annual Report of the Director* tbl. C-3 (1991 and 1992). Statistics from individual Circuits do

predictions of Petitioner and her Amici, the federal courts have not been, and will not be, inundated with litigation by parents dissatisfied with IV-D services.

CONCLUSION

Given the ample evidence of Congressional intent to create mandatory, enforceable requirements for state agencies' child support services, and given the critical importance of support payments to the well-being of children, Amici urge this Court to affirm the decision of the Ninth Circuit in this case.

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not break down litigation any further than "civil rights" actions.

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